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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

PEDRO SERRANO,

Defendant and Appellant.

2d Crim. No. B218763
(Super. Ct. No. PA060565-01)
(Los Angeles County)

Pedro Serrano appeals a judgment following conviction of first degree murder (count 1), firing a firearm at an inhabited dwelling (count 2), and possession of a firearm by a felon (count 3), with findings of firearm discharge causing death, commission of criminal acts for the benefit of a criminal street gang, and the service of a prior prison term. (Pen. Code, §§ 187, subd. (a), 189, 246, 12021, subd. (a)(1), 12022.53, subds. (b), (c), (d), (e), 186.22, subd. (b)(1), 667.5, subd. (b).)¹ We modify the judgment to award two additional days of presentence custody credit and order correction of the abstract of judgment, but otherwise affirm.

FACTS AND PROCEDURAL HISTORY

In the evening of December 13, 2007, Los Angeles police emergency dispatchers received telephone calls reporting gunshots fired by two men running on Laurel Canyon Boulevard. The telephone callers described the men as Hispanic

¹ All further statutory references are to the Penal Code unless stated otherwise.

"gangsters" with shaved heads who were running toward Terra Bella Street. Callers described one man as wearing a blue, black, or grey plaid shirt. Caller Laura Agueros reported that two men fired gunshots after parking their vehicle in front of her residence. Agueros described the vehicle as "black, it's not a large car, it[] looks about like . . . a Chrysler."

At the same time, the flight officer in a patrolling police helicopter noticed the driver of a black four-door automobile driving at a high rate of speed near Terra Bella Street. The flight officer then learned that a shooting had occurred on Laurel Canyon Boulevard. The officer informed the police emergency dispatcher, "I got the vehicle from the shooting. I need officers to set up a perimeter."

Neighborhood witnesses saw a dark-colored Toyota Camry automobile quickly leave the Laurel Canyon area as the police helicopter hovered overhead. The driver of the automobile threw a nine millimeter Baretta handgun from the window. A witness covered the handgun with an orange traffic safety cone until a police officer arrived to take possession of the weapon. Laboratory testing of the handgun later revealed that it contained Serrano's DNA.

The helicopter flight officer monitored the Toyota Camry automobile and illuminated it with a searchlight. The driver of the automobile stopped near the intersection of Sunburst and Lev Avenues. He and the passenger then left the automobile and ran in different directions. The flight officer directed ground officers to the areas where the driver and passenger fled.

Los Angeles Police Officer Mike Peters and his canine assistant soon found Serrano lying in dense bushes in front of a Sunburst Street residence. Serrano was wearing a dark long-sleeved shirt and jeans. Other police officers arrived and arrested him. Another police officer brought witness Agueros to the scene. She stated that she was "sure" that Serrano was the man who entered the passenger side of the automobile parked in her driveway.

A police officer searched the automobile that Serrano and the other man had abandoned. The officer found a .380 semiautomatic handgun on the front passenger

seat, and an identification card belonging to Serrano in the center console. The automobile was registered to Serrano's wife. A fingerprint analysis determined that Serrano's finger and palm prints were on the driver's door window.

The gunshots felled Ricardo Hernandez, who lay mortally wounded on the garage floor of a Laurel Canyon Boulevard residence. He had been shot 25 times. Hernandez was a member of the "Pacoima Southside Locos" criminal street gang.

At trial, Agueros testified that two men entered a vehicle that was parked without permission in the driveway of her residence. The vehicle had a distinctive silver grille. The man who entered the passenger side of the vehicle was "messing with [his] shirt or [his] pants." Agueros identified Serrano in court as the man who entered the passenger side of the vehicle.

Expert Witness Opinion Regarding Pacoima Street Gangs

Los Angeles Police Officer Roldolfo Rodriguez testified that he had been a gang enforcement officer investigating the "Pacoima Project Boys" (PJB) since 2001. The gang's criminal activities included murder, attempted murder, drive-by shootings, carjackings, grand theft, narcotics, witness intimidation, arson, and burglary. Rodriguez described recent convictions of PJB members for crimes of carjacking and attempted robbery.

Rodriguez testified that Serrano is a member of PJB and has a leg tattoo illustrating "PJB" and a handgun. Based upon his police gang enforcement experience, Rodriguez opined that gang members who have handgun tattoos are "shooters." Victim Hernandez was an associate of PJB and a member of another street gang that was not a rival to PJB.

Rodriguez stated that he knew that Hernandez, Heriberto Corpus and Felimon Contreras were "ripping off [PJB] narcotics dealers." "Ripping off" includes skimming or stealing from profits. Corpus and Contreras were also PJB members. Approximately a week following Hernandez's murder, Corpus and Contreras were killed in an execution-style manner.

Rodriguez testified that PJB has approximately 310 documented members, and also has factions or "cliques" with younger members. Two cliques of PJB, the "Rascals" and the "Pequenos," were enemies. Rodriguez stated: "The umbrella is the [PJB] gang. . . . [¶] Both cliques still consider themselves Project Boys, but they're enemies"

Rodriguez also explained that the "Mexican Mafia" controlled PJB. He stated that the Mexican Mafia governed similar to a business organization and prohibited skimming from local drug dealers. Rodriguez testified that when a gang member violates the organization's rules, "members of that same gang will be called upon to take care -- to address an issue." He opined that Hernandez's killing was for the benefit of, at the direction of, and in association with the PJB.

Jury Verdict and Sentencing

The jury convicted Serrano of first degree murder, discharging a firearm at an inhabited dwelling, and possession of a firearm by a felon. (§§ 187, subd. (a), 189, 246, 12021, subd. (a)(1).) It also found that he intentionally discharged a firearm causing death and committed counts 1 and 2 to benefit a criminal street gang. (§§ 12022.53, subds. (b), (c), (d), (e), 186.22, subd. (b).) In a separate proceeding, the trial court found that Serrano served a prior prison term. (§ 667.5, subd. (b).)

The trial court sentenced Serrano to a prison term of 58 years to life. It imposed and stayed sentence pursuant to section 654 for count 2, and various enhancements for counts 1 and 2. The court imposed an upper term of three years for count 3, and added four years for the criminal street gang enhancement and one year for a prior prison term. The court imposed restitution fines and various fees, ordered victim restitution, and awarded Serrano 581 days of presentence custody credit.

Serrano appeals and contends that 1) insufficient evidence supports the criminal street gang enhancement and 2) he is entitled to 583 days of presentence custody credit.

DISCUSSION

I.

Serrano argues that there is insufficient evidence that PJB constitutes a criminal street gang pursuant to section 186.22, subdivision (f) [definition of "criminal street gang"]. He points out that Rodriguez testified that PJB has different cliques, some of which are rivals. Serrano appears to contend that PJB is defunct, having been broken into splinter factions. He relies on *People v. Williams* (2008) 167 Cal.App.4th 983, 988 [evidence of collaborative activities or collective structure must exist to establish the various subgroups are part of the overall gang organization]. Serrano asserts that the evidentiary failure denies him due process of law under the federal and state constitutions.

In determining the sufficiency of evidence, we view the evidence and draw all reasonable inferences therefrom to determine whether reasonable and credible evidence supports the decision of the trier of fact. (*People v. Boyer* (2006) 38 Cal.4th 412, 480.) We do not reweigh the evidence nor do we reassess the credibility of witnesses. (*Ibid.*) We must accept reasonable inferences that the jury may have drawn from the evidence even if we would have concluded otherwise. (*People v. Hovarter* (2008) 44 Cal.4th 983, 1015.)

Section 186.22, subdivision (f) defines "criminal street gang" as "any ongoing organization, association, or group of three or more persons, whether formal or informal, having as one of its primary activities the commission of one or more of the criminal acts enumerated in paragraphs (1) to (25), inclusive, or (31) to (33), inclusive, of subdivision (e), having a common name or common identifying sign or symbol, and whose members individually or collectively engage in or have engaged in a pattern of criminal gang activity."

Sufficient evidence supports the criminal street gang finding. Rodriguez testified that Serrano admitted during an arrest in 2004 that he was a member of PJB. At the time of the current arrest, he had tattoos depicting "PJB" and a pointed firearm.

Serrano, Hernandez, Corpus and Contreras were either members or associates of the Pequeños clique of PJB.

Rodriguez described PJB as "an ongoing" criminal street gang with 310 members and a particular "turf." The gang's name is represented as "PJB," and the gang members use particular hand signs to indicate membership. Rodriguez described the cliques as being subgroups formed by younger members who are PJB members but form a clique to identify themselves separately from older gang members. He stated that "[t]he umbrella is the gang. But they hang out closely amongst their own friends." Rodriguez testified that Pequeños and other cliques "still consider themselves Project Boys." PJB was involved in murder, drive-by shootings, carjackings, narcotics sales, and other criminal activities, and members have recent convictions for violent crimes.

Rodriguez testified that the Mexican Mafia governed PJB and prohibited the skimming of profits from narcotics sales in the gang-claimed area. He stated that members of a gang may be called upon by the Mexican Mafia to enforce the rules against their friends in the gang. Rodriguez opined that a shooter's reputation is enhanced within the gang by killing a fellow gang member.

Sufficient evidence exists that PJB satisfied the statutory requirements of section 186.22, subdivision (f), and that it was not an extant gang that had splintered into many factions. We do not reweigh the evidence nor do we draw reasonable inferences different from those drawn by the trier of fact. (*People v. Hovarter, supra*, 44 Cal.4th 983, 1014-1015.) *People v. Williams, supra*, 167 Cal.App.4th 983 is inapplicable because here the prosecutor proved that Serrano was an admitted PJB member and a PJB shooter who achieved notoriety by enforcing gang rules against members and associates.

II.

Serrano contends that the trial court miscalculated his award of presentence custody credit, and that he is entitled to an additional two days. The Attorney General concedes. Serrano is correct. (§ 2900.5; *People v. Smith* (1989) 211 Cal.App.3d 523, 527 [defendant entitled to presentence custody credit for day of arrest and day of

sentence].) The abstract of judgment also does not reflect the sentence imposed for firearm use pursuant to section 12022.53.

The trial court shall prepare an amended abstract of judgment reflecting 583 days of presentence custody credit and the sentence imposed pursuant to section 12022.53 and forward it to the Department of Corrections.

We modify the judgment to reflect an award of 583 days of presentence custody credit and order correction of the abstract of judgment, but otherwise affirm.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

COFFEE, J.

Shari K. Silver, Judge
Superior Court County of Los Angeles

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